

Judge Clark found claimant's average weekly wage to be \$446.67. Also, the Judge denied claimant's request for reimbursement for the cost of an airline ticket that he used to return home to Kansas immediately following the October 13, 1995, accident.

Respondent and its insurance carrier contend that claimant, who is now deceased, failed to prove an average weekly wage. They also contend they should not be responsible for the airline ticket.

On the other hand, claimant's counsel contends the monies claimant received during the 26 week period before the accident should be considered wages under a liberal interpretation of the Workers Compensation Act, although those payments were described for income tax purposes as the repayment of loans. Additionally, because an emergency room physician recommended that claimant return to Kansas by airplane rather than by automobile, claimant's counsel contends that the cost of the airline ticket should be reimbursed as an authorized medical expense.

Those are the only issues before the Appeals Board on this appeal.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) Bill E. Scott injured his left cheek and left knee on October 13, 1995, while performing insurance adjusting services in Florida. The parties stipulated that the accident arose out of and in the course of employment. Also, the parties stipulated that Mr. Scott sustained a 25 percent functional impairment to the left lower extremity as a result of the accident.
- (2) Mr. Scott ruptured a blood vessel in his cheek and, after discussing the situation with the emergency room physician, flew home to Kansas.
- (3) Once in Kansas, Mr. Scott returned to his personal physician for follow up treatment and learned he had cancer in the area of the ruptured blood vessel. During the pendency of this proceeding, Mr. Scott died.
- (4) After working as a claims adjuster since 1946, Mr. Scott started his own company in 1962, which he named Adjusters Inc. Instead of drawing a salary, as the president, manager, and majority shareholder of the corporation, Mr. Scott intermittently withdrew funds from the corporation's account for his personal use. Although those withdrawals were labeled as the repayment of loans, the Appeals Board finds those payments actually represented Mr. Scott's withdrawals from the company profits and, therefore, wages for his work.
- (5) For the 26-week period before the October 13, 1995, accident, Mr. Scott withdrew the sum of \$11,166.69 for his personal use. Dividing that figure by 26 weeks yields a weekly average of \$429.49. Although Mr. Scott testified that he also earned \$500 per day for the six days immediately before his accident, the record does not establish that those

monies were received before the accident and, therefore, they have not been included in the average weekly wage computation.

CONCLUSIONS OF LAW

(1) Judge Clark found that Mr. Scott was paid \$11,166.69 for the 26 week period before the October 13, 1995, accident. As indicated above, the Appeals Board agrees with that finding. The Board, however, disagrees with the Judge's math. In computing the weekly average, the Judge found \$446.67. Our math indicates the 26 week average is \$429.49.

(2) The workers compensation act requires an employer to provide an injured worker reasonably necessary medical services and the transportation to obtain those services.¹

The conversations between Mr. Scott and the emergency room physician, along with those conversations between Mr. Scott's son and the physician, are not to be considered as part of the evidentiary record. At regular hearing, the parties stipulated that the medical hearsay contained in the preliminary hearing transcripts was not to be included in the record for final award purposes. The parties shall be bound by their stipulation. Therefore, the statements at preliminary hearing that the emergency room physician told Mr. Scott to return to Kansas by airplane to reduce the danger of the blood vessel rehemorrhaging cannot be considered by the Appeals Board.

The Appeals Board, however, considering the nature of the injury, the distance between Kansas and Florida, and Mr. Scott's age (two weeks shy of 75 years on the date of accident), and further noting that common knowledge indicates that a rehemorrhage could be life threatening and could occur on a lengthy drive, finds that flying to Kansas was reasonably necessary.

Therefore, the Appeals Board finds that the cost of Mr. Scott's airline ticket from Florida to Kansas should be paid by the respondent and its insurance carrier as authorized medical expense.

AWARD

WHEREFORE, the Appeals Board modifies the Award dated May 20, 1998, entered by Administrative Law Judge John D. Clark, as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS that the respondent, Adjusters Inc., and its insurance carrier, Fireman's Fund Insurance Company, are ordered to pay claimant's representatives for an accidental injury which occurred October 13, 1995, and based upon

¹ K.S.A. 44-510(a); K.A.R. 51-9-11.

an average weekly wage of \$429.49 for 50 weeks of permanent partial compensation at the rate of \$286.34 per week or \$14,317.00, for a 25% functional impairment to the leg, making a total award of \$14,317.00.

In addition, the respondent and its insurance carrier are ordered to pay or reimburse the cost of the airline ticket used to return Mr. Scott to Kansas after the October 13, 1995, accident.

The respondent and its insurance carrier are ordered to pay the expenses as set forth in the Award.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John L. Carmichael, Wichita, KS
Richard A. Boeckman, Great Bend, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director